

Access to RTO West Services (Facilities Inclusion)

Background

A number of RTO West work groups (including the RRG) have discussed the issue of what facilities a Participating Transmission Owner (“PTO”) should turn over to the RTO (and for what purposes). In the RRG discussion of the facilities inclusion element of the “Option 6” pricing proposal, some representatives characterized the issue as ensuring that wholesale loads or generators have access to RTO West services.

If, in order to take service from RTO West, a wholesale load or generator needs access over a PTO’s distribution system or transmission facilities that a PTO has not turned over to the RTO, how will this be handled? Will the wholesale customer be required to deal separately with the PTO to get access to a point of delivery/receipt on RTO West’s system or will the RTO be involved in some way to ensure that access is made available?

The Option 6 Pricing Proposal addresses this issue for General Transfer Agreements (“GTA”) by providing:

The decision as to which transmission facilities shall be included as RTO facilities shall assure continuation by the RTO of service provided by transmission owners to loads of other transmission owners pursuant to pre-RTO transmission agreements (such as GTAs)

Some RRG members have raised an issue as to whether this is sufficient to provide access to load that is party to pre-RTO transmission agreements, others have noted that this continuation of service should be extended to all future loads.

Options

- A. Require PTOs to turn over all of their facilities that are needed to support the RTO’s transfer capabilities and the Order 2000 RTO functions,¹ including those PTO facilities that are necessary to serve wholesale loads and generation.
- B. (1) Require PTOs to turn over all of their facilities that are required for RTO operations and to fulfill RTO functions²

¹ Criteria should be developed to determine what is needed for RTO operations and functions. The PTOs would apply these criteria to their facilities. A party disagreeing with a PTO’s decisions regarding which facilities to turn over could raise their concerns with FERC at the time of the RTO West filing.

² This option draws a distinction between the RTO “fulfilling RTO functions” by offering service from a point of receipt or delivery on the RTO system versus the RTO “fulfilling *and facilitating* RTO functions” by facilitating/governing the arrangement for access over a PTO’s facilities that are not transferred to the RTO. (Not all parties agree that this distinction is appropriate.)

(2) Provide the PTOs discretion with regard to turning over other facilities that might be required to serve wholesale loads and generation, but require the following:

- (a) Requests for FERC-Jurisdictional services will be submitted to the RTO
- (b) PTOs will provide access over their transmission and distribution facilities that are not turned over to the RTO but that are needed to serve wholesale load and generation
- (c) The PTO will handle the mechanics of providing access on its system provided:
 - (i) RTO will develop applicable guidelines/standards and the PTO will apply such guidelines/criteria
 - (ii) The RTO can get involved at the request of the customer or the PTO
 - (iii) In the event that the PTO fails to ensure that adequate facilities are constructed in order to provide access through its system to RTO West, RTO West has backstop authority to compel a PTO to construct such facilities

C. Stay silent on how an RTO customer would obtain access through a PTO's distribution system and facilities that are not transferred to the RTO.

Recommendations

Aleka Scott and Curt Winterfeld have prepared papers supporting approaches similar to Option A (see Attachments 1 and 2, respectively). Carl Imparato has prepared a proposal regarding the "Outline of Principles for Generation Interconnection and Other FERC-Jurisdictional Services" that is also relevant to this issue (see Attachment 3). While Carl's proposal is not identical to Option B, it contains some of the same principles. As noted above, the Option 6 Pricing Proposal is also relevant.

Attachment 1

Facilities Inclusion **Option 3 – Seven-Factor Test Plus Wholesale**

A close reading of Order 2000 sheds lights on why using the seven-factor test to determine which facilities should be included in RTO West is inappropriate in the first instance. Instead, facilities that are used in wholesale transactions (not including retail access) are transmission facilities that should be included in the RTO.

The Commission states very clearly that: “Our objective is for all transmission-owning entities in the Nation, including non-public utility entities, to place their transmission facilities under the control of appropriate RTOs in a timely manner.” (FERC Order No. 2000, page 4.)

Order 2000 states that among the goals of the order are to 1) to remove remaining opportunities for discriminatory transmission practices, 2) improve market performance, and 3) facilitate lighter handed regulation. (Order 2000, page 3.) In considering the “scope” of an RTO, the Commission is interested in increasing the number of buyers and sellers covered by an RTO. (page 257) FERC is interested in having as many buyers and sellers have access to the RTO as a way to encourage competitive energy markets (page 259) and to ensure that the RTO is not dominated by “ a few buyers or sellers.” (page 261) In fact, the Commission is very explicit about which facilities should be included in an RTO. In the section of Order 2000 entitled “Control of Facilities within a Region,” Order 2000 states:

“To satisfy the scope and configuration characteristic of this Final Rule, all or most of the transmission facilities in a region must be included in the RTO. . . . We do not believe it would be desirable to approve an RTO proposal for a region if the proponents represent only a small portion of the facilities in an otherwise satisfactory region.” (pages 266-267)

What does this mean for RTO West? At issue here is the inclusion of facilities which some owners may not include in their RTO filing (using the seven-factor test as justification) but which never-the-less are used to serve wholesale utilities. This issue also encompasses lower voltage facilities used to transfer wholesale power that some owners will include in their RTO filings. The service provided over "general transfer agreements" (GTAs) is used to frame the issue, but the issue described is not limited to GTAs.

In this Pacific Northwest region of RTO West, there are over 60 utilities that are served via transfer over the facilities of intervening transmission owners. These transfer agreements, as a group, are referred to as general transfer agreements or GTAs.

For decades and currently, wholesale utilities served by GTAs have received and receive the equivalent of direct access to the BPA transmission grid. The RRG is faced with a policy question of whether to reduce the quality and increase the price of access to the transmission system currently afforded these systems. Given the historical treatment, the RTO should not adopt standards for facilities inclusion which gives lesser access and service than these wholesale customers are currently enjoying.

Utilities served by GTAs are wholesale utilities. Service to wholesale utilities is within FERC's jurisdiction, as asserted by FERC in Order 2000 and affirmed by the recent U.S. Court of Appeals (Transmission Access Policy Study Group v. Federal Energy Reg. Comm'n, No. 97-1715 (D.C. Cir. June 30, 2000)). This decision affirms that facilities used at wholesale are not "local distribution facilities." It also clarifies that "the seven factor test applies only to unbundled retail sales. . ." Therefore, use of the seven-factor test as the determining test as to whether wholesale facilities should be considered transmission and eligible for inclusion in the RTO is not appropriate.

Facilities used to serve wholesale electric utilities are clearly within FERC's jurisdiction as transmission and are not subject to the seven-factor test. Order 2000 is clear that it "all or most" of the transmission facilities of a jurisdictional utility ought to be included in the RTO to achieve sufficient scope. Without inclusion of facilities necessary for service to wholesale loads, RTO West will have difficulty meeting the scope characteristic, encouraging the wholesale market by bringing as many buyers and sellers to the market, eliminating residual discriminatory practices, elimination of pancaked rates, and providing the kind of access which the Commission envisioned for wholesale power buyers. Further, it denigrates the virtual direct access to the transmission system that these utilities served by GTAs have enjoyed for decades.

On discussing facilities inclusions, additional points are necessary. If the facilities used in GTA service are not included in the RTO, we will not be achieving the goal of light-handed regulation. In fact, we will have doubled the regulatory burden. For those facilities within the RTO, wholesale utilities would have to deal with two FERC proceedings: 1) transmission owner rate proceedings setting the price to the RTO, and 2) RTO rate proceedings. Additionally, these utilities will have to deal with either a separate FERC proceeding or with a State proceeding for those facilities used at wholesale but which are not included in the RTO. Creation of additional regulatory hurdles makes access to the wholesale market more difficult and costly for the many small wholesale players because of the associated transaction and regulatory costs.

Although application of the seven-factor test is not appropriate to facilities used at wholesale, let's look at that test for a moment. The factors are as follows:

- 1) Local distribution facilities are normally in close proximity to retail customers.
- 2) Local distribution facilities are primarily radial in character.
- 3) Power flows into local distribution systems; it rarely, if ever, flows out.

- 4) When power enters a local distribution system, it is not re-consigned or transported on to some other market.
- 5) Power entering a local distribution system is consumed in a comparatively restrict geographical area.
- 6) Meters are based at the transmission/local distribution system.
- 7) Local distribution systems will be of reduced voltage.

While wholesale facilities in question may meet some of the criteria to be considered distribution, they fail, on a uniform basis, at least 2 of the tests. For example, power is in fact re-consigned at the distribution system/transmission interface, i.e. the wholesale utility's point of delivery (factor #4). Likewise, the transmission/distribution interface is metered as suggested in factor #6. Meters are at the wholesale utility's point of delivery, the transmission/local distribution interface. Thus facilities upstream of the point of re-consignment are transmission facilities and those downstream are likely to be distribution.

"Radial" is not a valid distinguishing characteristic to distinguish between distribution and transmission in the rural West. Because of the vast distances between generation and load centers, and between load centers, radial transmission lines are much more common in the rural West than in other parts of the country. Many transmission lines are radial simply because of geography: mountain ranges, coasts, and remote load areas. Thus, in the rural West, less reliance should be given to factor #2 in considering whether facilities are distribution or transmission.

Excluding those facilities that serve wholesale utilities would result in additional constraints upon numerous wholesale electric utilities in reaching the wholesale power market. These facilities should be included in the RTO, at a melded company, area, or RTO-wide rate, in order to meet the goals of Order 2000 and to facilitate access to wholesale energy market at un-pancaked rates for the greatest number of buyers.

8/1/00
Aleka Scott

Attachment 2

INCLUSION OF FACILITIES IN RTO WEST

POSITION OF DESERET G&T CO-OPERATIVE

The issue is not vague or ambiguous as to the intention of the FERC or Order 2000. Very plainly, the operational control of all transmission facilities of FERC-regulated facilities must be transferred to the RTO. The issue of what facilities are “local distribution facilities” applies only to those facilities involved exclusively in “unbundled retail sales” – and which are not involved in a wholesale transaction.

FERC Order 2000 speaks to the issue of what facilities are to be included in the operational control of the RTO in at least two instances: First, it requires “[a]ny public utility’s proposal to participate in a Regional Transmission Organization filed pursuant to paragraph (c)(1) of this section must propose that operational control of that public utility’s transmission facilities will be transferred * * *.” (Part 35.34 (f)) Second, it requires “[e]very public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce * * * and that has filed * * * to transfer operational control of its facilities to a transmission entity* * *” to make a filing explaining how the transmission entity does or will meet the RTO requirements of Order 2000. (Part 35.34 (h)))

While some would argue that it is unclear what is meant by “transmission facilities” or “facilities used for the transmission of electric energy in interstate commerce”, Order 888, Order 2000, and the recent D.C. Circuit Court of Appeals makes absolutely clear that all facilities used in wholesale transactions are considered “transmission” as that term is used by statute and the FERC in determining its jurisdictional scope. (See 2000 WL 762706 (D.C. Cir.) Sections 18, 19, 20, and 21). This issue of whether a facility’s involvement in a wholesale transaction is to be used as a test of its jurisdiction by the FERC prior to and subsequent to application of the “seven-factor” test was specifically brought before the Court of Appeals by several state regulatory agencies. (See Section 20.) In this regard, the Court stated “FERC’s assertion of jurisdiction over all wholesale transmissions, regardless of the facility, is clearly within the scope of its statutory authority.” (See Section 21.) The order goes on to state the following:

“The seven factor test applies only to unbundled retail sales, where FERC seeks to regulate pursuant to the separate grant of jurisdictional authority over transmissions in interstate commerce. The statute does not define ‘facilities used in local distribution,’ but instead leaves that task to FERC. * * * Order 888 says that distribution-only facilities which sell only at retail will still be considered local distribution facilities” (See Section 21.)

As to inclusion of facilities for transmission planning of the RTO, Order 2000 requires it to be “responsible for planning as necessary to provide efficient, reliable and non-discriminatory service.” Since the RTO must be the only provider of transmission

service over facilities under its control, and those facilities must include all the transmission facilities of the public utilities which join an RTO, the facilities under the operational control and planning purview of the RTO would be one in the same, although the exercise of responsibilities of the RTO through delegation could well be developed differently for operation of facilities versus planning of new facilities.

Finally, pricing for cost recovery is clearly distinct from the issue of what facilities must be within the operational control of the RTO. Having all transmission facilities involved in wholesale transactions under operational control of the RTO does not preclude different rate treatment, in particular, the direct assignment recovery of certain facilities that provide radial service.

Attachment 3

NWRTTO: Outline of Principles for Generation Interconnection and Other FERC-Jurisdictional Services

[Carl Imparato - Draft #1 - August 14, 2000]

The RTO Tariff needs to ensure that the RTO provides mechanisms through which Eligible Customers may obtain all FERC-jurisdictional services that are currently available under the Order 888 and the FPA, including generation interconnection, over the transmission and distribution systems of PTOs.

There is not sufficient time - between now and October 15 - to address in detail the many important issues that need to be fleshed out in the RTO Tariff. Therefore, we propose the following principles for incorporation in the October 15 draft.

1. All requests for any FERC-jurisdictional services will be handled by the RTO.
 - Most requests for transmission service can be processed through the routine transmission access and congestion management provisions specified in the RTO Tariff.
 - All other requests for FERC-jurisdictional services will be handled by requiring that the Eligible Customer's request be submitted to the RTO, which will forward the request to the PTO for analysis (through the planning procedures that will be specified in the RTO Tariff) if the request either (i) requires the use of distribution facilities or (ii) the potential upgrading of transmission or distribution facilities.
2. The RTO will allow the Eligible Customer and the PTO to handle the mechanics of the study process (in accordance with study procedures and timelines that will be specified in the RTO Tariff).
 - However, the RTO will also be allowed to monitor the process and may participate directly in the process at the request of either party.
3. The RTO will include a comprehensive generation interconnection policy in the RTO Tariff. The policy will address, among other things, the procedures and timelines for studies, rules for determining the types of network upgrades for which the new generator will be responsible, and rules for determining how system benefits associated with new generator interconnections will be determined and allocated.
4. Should a dispute arise, the dispute resolution procedures in the RTO Tariff would be relied upon.
 - Under those procedures, parties could voluntarily agree to mediation. But at either party's request, the RTO's mandatory arbitration process would be initiated. Although arbitration would be mandatory, the results would be binding only if both parties stipulated to that at the start of the process. Otherwise, only the factual record established by the arbitration would be given substantial deference and the parties would bring the resulting arbitrator's opinion to FERC, which would grant whatever deference it chose to grant. The RTO would be entitled to participate in both the arbitration process and in any subsequent FERC proceeding.

Other FERC-Jurisdictional Services (First Draft of Possible Interim Tariff Language)

- a) All requests for FERC-jurisdictional services shall be submitted to the RTO. If granting the request for such a FERC-jurisdictional service would not require the use of a PTO's distribution facilities and would not require the expansion of a PTO's transmission or distribution facilities, the RTO shall respond to the request.
- b) If granting a request for such a FERC-jurisdictional service might require the use of a PTO's distribution facilities or the possible expansion of a PTO's transmission or distribution facilities, the RTO shall immediately forward the request to the appropriate PTO. The PTO shall respond to such a request pursuant to Sections XXX of the RTO Tariff. The procedures specified in Sections XXX of the RTO Tariff shall be construed to apply to the modification of a PTO's distribution facilities as well as its transmission facilities.
- c) The RTO shall have the right to monitor the PTO's treatment of a request that has been forwarded by the RTO to the PTO, and the PTO shall cooperate with the RTO's reasonable requests in furtherance of this monitoring role.
- d) If an applicant believes that a request that has been forwarded to a PTO is not being treated expeditiously, justly or reasonably by the PTO, the RTO shall have the right to investigate and participate in the PTO's process for responding to the request and to participate in any dispute resolution process or regulatory or judicial proceeding related thereto.
- e) Should a dispute arise under this Section, the parties to the dispute may mutually agree to dispute resolution procedures specified in Section YYY of the RTO Tariff. It is the intent of the RTO Tariff that: (i) any party to the dispute may appeal the arbitrator's decision to the Commission; (ii) in the case of such an appeal, only the factual record established through the arbitration procedure be afforded substantial deference by the Commission; and (iii) the arbitrator's decision be afforded whatever deference as the Commission deems to be appropriate. The RTO shall be deemed to have standing to participate, at its discretion, in such an arbitration process and/or any subsequent FERC proceeding.
- f) A Generating Unit or load which is not interconnected to the Grid as of the RTO Operations Date must satisfy the requirements specified in its interconnection agreement with the appropriate PTO prior to obtaining transmission access. *[Add language stating that the requirements for interconnection as of the RTO Operations Date shall be those specified in the RTO Tariff.]* The interconnection agreement shall specify technical requirements for interconnection and operation, and the Generating Unit's or load's obligation, if any, to pay for an appropriate share of the cost of those transmission and distribution system upgrades that may be required to address the reliability and local congestion impacts that would be created by the new Generating Unit or load. Upon satisfaction of these requirements and obligations, the new Generating Unit or load may secure transmission access in accordance with the RTO Tariff.
- h) The RTO Tariff shall include comprehensive policies for interconnection and for system expansion. Such policies shall be consistent with the Federal Power Act and Commission policies and shall at a minimum specify policies and procedures for: determining a requesting party's appropriate share of the cost of any required transmission additions or upgrades, appropriate credits to be provided to a requesting party for any system benefits created by such transmission additions or upgrades, and systematic evaluation and comparison of transmission expansion and generation and demand-side alternatives to transmission expansion.